

BILL ANALYSIS

Senate Research Center

S.B. 1654
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Enrolled

DIGEST AND PURPOSE

Currently, certain insurance companies are placing restrictions on how retained defense counsel can conduct the defense of the insured. The State Bar of Texas Professional Ethics Committee recently published Ethics Opinion 533 stressing that the lawyer's only client is the insured and that it is impermissible under the Texas Rules of Professional Conduct for a lawyer to agree with an insurance company to restrictions which interfere with the lawyer's exercise of independent professional judgement. S.B. 1654 codifies the ideas stressed in Ethics Opinion 533 to prohibit guidelines from being imposed by an insurer on lawyers defending the insured.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2B, Insurance Code, by adding Chapter 104, as follows:

CHAPTER 104. PROVISION OF DEFENSE COUNSEL BY LIABILITY INSURERS

Sec. 104.001. DEFINITION. Defines "defense counsel," "insurer," and "litigation-management guideline."

Sec. 104.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to an insurer that issues certain liability insurance policies.

Sec. 104.003. CERTAIN GUIDELINES PROHIBITED. Prohibits an insurer from submitting to a defense counsel a litigation-management guideline that requires or suggests that a defense counsel perform certain activities. Sets forth the types of litigation-management guidelines included in the prohibition of this section. Provides that this section does not prohibit an insurer from disputing the reasonableness or necessity of attorney's fees or expenses after receiving a fee invoice submitted by a defense counsel.

Sec. 104.004. CERTAIN CONTRACT PROVISIONS VOID. Provides that a provision in a contract between an insurer and a defense counsel or between an insurer and an insurer that violates Section 104.003 is void. Provides that a waiver of a provision of Section 104.003 by an insured is void. Provides that the remaining provisions of a contract are valid and enforceable, to the extent permitted by other law, if a contract provision is void because the provision violates Section 104.003.

Sec. 104.005. DAMAGES; INJUNCTIVE RELIEF. Authorizes an insured to bring an action against an insurer for certain purposes. Provides that an insurer that, based on a litigation-management guideline that violates this chapter, refuses to pay all or part of a defense counsel's fee or expenses for the representation of an insured is liable to the counsel and the insured for the reasonable value of any unpaid legal services or expenses provided by the counsel in the representation of the insured. Requires a court to award reasonable and necessary attorney's fees to a person who recovers damages or obtains injunctive relief under this section.

Sec. 104.006. CIVIL PENALTY. Provides that an insurer who violates Section 104.003 is

liable for a civil penalty. Sets forth the maximum authorized civil penalty under this section. Authorizes the attorney general, at the request of the commissioner of insurance, to file and prosecute a civil suit in a district court in Travis County to recover a civil penalty under this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2001.